IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.155 OF 2007
AND
CIVIL APPLICATION NO.105 OF 2007

WITH

FAMILY COURT APPEAL NO.66 OF 2007

Anita Kulkarni ...Applicant/
Appellant

V/s.

Milind Kulkarni ...Respondent

Mr.R.V. Pai alongwith Mrs.Bina R. Pai, Advocates, for the Applicant-Appellant.
Respondent in person.

CORAM : J.N. PATEL &
A.A. SAYED, JJ.

DATE : 6TH JULY, 2007.

P.C. :

1. Civil Application No.155 of 2007 is filed for tendering additional evidence on record. This Application would be considered at the time of final hearing of the Appeal.

2. Heard Civil Application No.105 of 2007. This application for interim stay has been filed by the Applicant-wife, whose Petition for divorce came to be dismissed by the Family Court, Bandra. The stay is sought on the execution of the order of the Family

Court. While dismissing the Petition, the Family Court saddled the Applicant with cost of Rs.50,000/- and it also directed her to convey her half share and title in the flat to the Respondent-husband on payment of Rs.3,98,297.50

3. The learned Counsel for the Appellant submitted that on both the counts the Court has not been fair to the Appellant and that it would be unjust to call upon her to pay cost of Rs.50,000/- when her Appeal is admitted. As far as the other aspect is concerned, it is submitted that relating to the conveyance of the half title of the matrimonial house, it is submitted that the Trial Court has not taken judicial notice of the fact relating to escalation of prices in geometrical proportion in the properties involved and fixed the value of the flat as on the date it was purchased by the parties.

4. The application is strongly contested by the Respondent who appears in person. He has fairly conceded that in so far as the condition of conveying the half title of the matrimonial house is concerned, the Court may grant stay but in so far as cost awarded to him while dismissing the Petition for divorce i.e. in the sum of Rs.50,000/- should be paid to him by

directing the Applicant to deposit the same as he has suffered a lot in the litigation which was found to be totally false and frivolous by the Trial Court.

5. It is not disputed that the parties to the Appeal are gainfully employed independently and are residing separately. Therefore, we find that if this Court grants interim stay to the effect and operation of order in so far as it relates to the cost which is quantified at Rs.50,000/- and conveyance of half title of the house, no prejudice would be caused to the Respondent as necessity of the parties can be taken care by this Court when they finally hear and dispose of the matter, as it enable the Court to determine the respective rights of the parties and grant appropriate reliefs flowing from such rights. Therefore, the application for interim stay is allowed and the ad-interim stay granted by this Court is confirmed. The matter be listed for admission in due course.

6. We have asked the learned Counsel for the Applicant as well as Respondent, who is present in person, as to whether the parties can amicably settle the matter as for the present, the Respondent is having totally hostile attitude towards any attempt at reconciliation. We expect that the parties would make

an effort through mediation or reconciliation in this direction as for the present the time is still in their favour, they being comparitively young in age and can rehabilitate themselves. These observations are made only for the purpose of suggesting to the parties that the reconciliation would be in their interest, as this Court is prima-facie of the opinion, after going through the impugned judgment and order, that the marriage between the parties has irrevocably broken down.

7. Both the Civil Applications stand disposed of accordingly.

8. Appeal is to be taken up in due course with liberty to the parties to move this Court as and when contingency arises.

[J.N. PATEL, J.]

[A.A. SAYED, J.]